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Attorneys for Defendant,
HP INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LOUIS HICKS, an individual, on behalf
of himself, the general public, and those
similarly situated,

Plaintiff,

v.

HP INC.,

Defendant.

Case No.

**DEFENDANT HP INC.'S
NOTICE OF REMOVAL OF
ACTION TO THE UNITED
STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
CALIFORNIA UNDER 28 U.S.C.
§§ 1332, 1441, 1446, 1453
(DIVERSITY AND CAFA
REMOVAL)**

*[Table of Contents of Exhibits filed
concurrently herewith]*

[Santa Clara County Superior Court
Case No. 17CV317178]

Complaint Filed: 10/11/2017
Trial Date: TBA

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that Defendant HP Inc. (hereinafter “HP”), hereby removes to this Court the action originally commenced in the Superior Court of California for the County of Santa Clara, entitled *Hicks v. HP Inc.*, Case No. 17CV317178 (“State Court Action”). This removal is made pursuant to 28 U.S.C. sections 1332, 1441, 1446, and 1453.

STATEMENT OF THE CASE

1. On October 11, 2017, Plaintiff Louis Hicks commenced State Court Action.

2. Plaintiff has brought this action as a putative class action purportedly on behalf of “all persons, natural or otherwise, who, while residing in California, purchased a Purported USB 3.1 Laptop.” (Complaint, ¶ 51.)

3. As explained below, this Court has original jurisdiction over this action pursuant to 28 U.S.C. section 1332(d) based upon the diversity-of-citizenship and amount-in-controversy requirements applicable to class actions. The diversity-of-citizenship requirement of 28 U.S.C. section 1332(d)(2)(A) is satisfied because at least one member of the putative Plaintiff class is a citizen of a State different from at least one Defendant. The diversity-of-citizenship requirement of 28 U.S.C. section 1332(d)(2)(B) is satisfied because at least one member of the putative Plaintiff class is a citizen of a foreign state and Defendant is a citizen of two States. The amount-in-controversy requirement of 28 U.S.C. § 1332(d)(2) is satisfied because the aggregate alleged claims of the individual members of the putative class exceed the sum or value of \$5,000,000, exclusive of interest and costs. Removal jurisdiction under CAFA was not apparent from the face of the initial complaint because the amount in controversy was not alleged and also because the initial complaint did not allege the citizenship (which is distinct from residence) of members of the putative Plaintiff

1 class. The first pleading or “other paper” from which the total amount in controversy
 2 was ascertainable was an e-mail sent on March 18, 2019, by counsel for Plaintiff to
 3 counsel for HP, which represented that the amount in controversy exceeded
 4 \$5,000,000 (the “March 18, 2019 Letter”). *See* 28 U.S.C. § 1446(b)(3). On or about
 5 April 11, 2019, HP’s investigation confirmed for the first time that at least one
 6 member of the putative Plaintiff class is a citizen of either a State or foreign state
 7 different than Defendant.

8 **BASIS FOR REMOVAL**

9 4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§
 10 1332, 1441, and 1446 and the Class Action Fairness Act of 2005 (“CAFA”), Pub. L.
 11 109-2, 199 Stat. 4 (2005).¹

12 5. Under CAFA, a district court has original jurisdiction over any class
 13 action in which: (1) the amount in controversy exceeds \$5,000,000; (2) there is
 14 minimal diversity, i.e., any member of a class of plaintiffs is a citizen of a State
 15 different from any defendant; (3) the number of members of all proposed plaintiff
 16 classes in the aggregate is greater than 100. 28 U.S.C. §§ 1332(d)(2), (d)(5).

17 **Diversity of Citizenship**

18 6. This action meets the CAFA minimal-diversity requirement. The named
 19 Plaintiff, Louis Hicks, is, and at all relevant times was, a resident of the state of
 20 California. (Complaint, ¶ 4.)

21 7. Defendant HP Inc. is a corporation incorporated under the laws of the
 22 State of Delaware, having its principal place of business in Palo Alto, California.
 23 (Complaint, ¶ 5.) Defendant HP Inc. is therefore a citizen of Delaware and
 24 California. *See* 28 U.S.C. § 1332(c)(1).

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 26
 27 ¹ The Class Action Fairness Act of 2005 is codified in 28 U.S.C. §§ 1332(d), 1453,
 28 and 1711-1715.

1 8. The number of members of the proposed putative classes is greater than
 2 100. The Complaint alleges that, “The precise number of members in the Class is not
 3 yet known to Plaintiff, but he estimates that it is well in excess of 1,000 people.”
 4 (Complaint, ¶ 53.)

5 9. For purposes of determining diversity of citizenship, the court looks at
 6 “all members in a class.” 28 U.S.C. § 1332(d)(1)(A). Here, the members of the
 7 putative class are alleged to be “all persons who, while residing in California,
 8 purchased a Purported USB 3.1 Laptop” (Complaint, ¶ 51), and thus can be citizens
 9 of any state. *King v. Great American Chicken Corp, Inc.*, 903 F.3d 875, 879 (9th Cir.
 10 2018) (“A person’s state of citizenship is established by domicile, not simply
 11 residence, and a residential address in California does not guarantee that the person’s
 12 legal domicile was in California”). The requisite minimal diversity of citizenship
 13 exists, pursuant to 28 U.S.C. section 1332(d)(2)(A), because at least one member of
 14 the putative Plaintiff class is a citizen of a State different from HP. In particular, at
 15 least one member of the putative Plaintiff class is neither a citizen of California nor
 16 Delaware, and is in fact domiciled in and a citizen of Pennsylvania. The requisite
 17 minimal diversity of citizenship also exists, pursuant to 28 U.S.C. section
 18 1332(d)(2)(B), because at least one member of the putative Plaintiff class is a citizen
 19 or subject of a foreign state, and HP is a citizen of two U.S. States. In particular, at
 20 least one member of the putative Plaintiff class is a citizen of India.

21 **Amount in Controversy**

22 10 The amount placed in controversy by the averments of the Complaint
 23 and the March 18, 2019 Letter (accepting such averments as “true” for this purpose
 24 only) exceeds the \$5,000,000, exclusive of interest and costs, required under Section
 25 1332(d)(2) of CAFA.

26 11. Plaintiff seeks, among other relief, “An award of compensatory damages
 27 in the amount of the price premium paid. . . .” (Complaint, Prayer for Relief, A.1.)
 28

1 The March 18, 2019 Letter sets forth a specific dollar amount that represents the
 2 settlement value of the price premium class members allegedly paid. When the
 3 amount specified in the March 18, 2019 Letter is multiplied by either the number of
 4 units sold or potential putative class members, the total amount in controversy
 5 exceeds \$5,000,000.

6 12. Therefore, the amount placed in controversy by the March 18, 2019
 7 Letter exceeds the jurisdictional minimum of \$5 million. *See* 28 U.S.C. §
 8 1332(d)(6) (“In any class action, the claims of the individual class members shall be
 9 aggregated to determine whether the matter in controversy exceeds the sum or value
 10 of \$5,000,000, exclusive of interest and costs.”).

11 **ALL PROCEDURAL REQUIREMENTS FOR REMOVAL**
 12 **HAVE BEEN SATISFIED.**

13 13. Removal to Proper Court. Pursuant to 28 U.S.C. section 1446(a), HP is
 14 filing this Notice of Removal in the United States District Court for the Northern
 15 District of California, which is the federal district encompassing the state court where
 16 the State Court Action is pending, which is the Superior Court of the State of
 17 California for the County of Santa Clara.

18 14. Removal is Timely. This action has been removed in accordance with
 19 the requirements of 28 U.S.C. section 1446(b). Where, as here, “the case stated by
 20 the initial pleading is not removable, a notice of removal may be filed within 30 days
 21 after receipt by the defendant, through service or otherwise, of a copy of an amended
 22 pleading, motion, order or other paper from which it may first be ascertained that the
 23 case is one which is or has become removable[.]” 28 U.S.C. § 1446(b)(3). Here,
 24 removal jurisdiction under CAFA was not apparent from the face of the initial
 25 complaint because the complaint did not specify the amount in controversy or the
 26 citizenship of the putative class members. On March 18, 2019, counsel for Plaintiff
 27 sent an e-mail to counsel for HP attaching a settlement proposal which indicated that
 28

1 the total amount in controversy exceeded \$5,000,000. This March 18, 2019 Letter
2 was the first “amended pleading, motion, order or other paper” from which HP could
3 ascertain that the case met the amount-in-controversy requirement. HP promptly
4 removed the action within 30 days of receiving that e-mail, pursuant to 28 U.S.C.
5 section 1446(b).

6 15. Pleadings and Process. Pursuant to 28 U.S.C. section 1446(a), true and
7 correct copies of all of process, pleadings and orders served upon HP in the State
8 Court Action are attached as exhibits hereto. A table of contents listing the exhibits
9 also is attached.

10 16. HP’s Consent to Removal Sufficient. HP is the only defendant named in
11 this action. Therefore, no further consent is required. 28 U.S.C. § 1453(b) (class
12 action may be removed by any defendant under CAFA).

13 17. Notice. Written notice of the filing of this Notice of Removal will be
14 promptly served upon counsel for Plaintiff. HP also will promptly file a copy of this
15 Notice with the Clerk of the Superior Court of California, County of Santa Clara.

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CONCLUSION

18. By this Notice of Removal and the associated attachments, HP does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections it may have to this action. HP intends no admission of fact, law or liability by this Notice, and it expressly reserves all defenses, motions and/or pleas. HP prays that the State Court Action be removed to this Court, that all further proceedings in the state court be stayed, and that HP receive all additional relief to which it is entitled.

DATED: April 16, 2019

DOLL AMIR & ELEY LLP

By: /s/ Hunter R. Eley

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